

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA §
§
v. § CRIMINAL NO. 4:16CR75 MAC/KPJ
§
JOSE LUIS MARTINEZ §

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the Government's request for revocation of Defendant's supervised release. After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on September 28, 2016, to determine whether Defendant violated his supervised release. Defendant was represented by Frank Henderson. The Government was represented by Bradley Visosky.

On January 25, 2013, Defendant was sentenced by the Honorable Ivan L. R. Lemelle, United States District Judge, to a sentence of sixty (60) months imprisonment followed by a five (5) year term of supervised release for the offense of Possession with Intent to Distribute 500 Grams or more of Cocaine. Defendant began his term of supervision on August 7, 2015. This case was transferred to the Honorable Marcia A. Crone on May 26, 2016.

On July 19, 2016, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender under Supervision (the "Petition") (Dkt. 2). The Petition asserts that Defendant violated the following conditions of supervision: (1) Defendant shall refrain from any unlawful use of a controlled substance; (2) Defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician; (3) Defendant shall report to the

probation officer as directed by the Court or probation officer, and shall submit a truthful and complete written report within the first five (5) days of each month; and (4) Defendant is required to participate in a mental health program as deemed necessary and approved by the probation officer. Defendant will incur costs associated with such program, based on the ability to pay as determined by the probation officer.

The Petition alleges that Defendant committed the following violations: (1) On March 9, 2016, Defendant submitted a urine specimen which tested positive for marijuana and cocaine. Defendant admitted verbally and in writing to use of marijuana and cocaine on March 6, 2016; (2) On April 22, 2016, Defendant submitted a urine specimen at the U. S. Probation Office, which tested positive for cocaine. The specimen was confirmed positive by Alere Toxicology Services, Inc.; (3) Defendant failed to report to the U. S. Probation Office as instructed on March 7, and June 21, 2016; and (4) Defendant failed to attend individual mental health counseling sessions on March 8, April 4, April 29, and May 9, 2016.

At the hearing, Defendant entered a plea of true to allegation one (1) Defendant shall refrain from any unlawful use of a controlled substance. Defendant waived his right to allocute before the district judge and his right to object to the report and recommendation of this Court. The Court finds that Defendant has violated the terms of his supervised release.

RECOMMENDATION

Pursuant to the Sentencing Reform Act of 1984, and having considered the arguments presented at the September 28, 2016, hearing, the Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of ten (10) months, with no supervised release to follow. The Court further recommends that Defendant's term of imprisonment

be carried out in FCI Seagoville, if appropriate.

SIGNED this 5th day of October, 2016.

A handwritten signature in black ink, appearing to read "KCPJ".

KIMBERLY C. PRIEST JOHNSON
UNITED STATES MAGISTRATE JUDGE